

ESTTA Tracking number: **ESTTA638865**

Filing date: **11/13/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215246
Party	Plaintiff LVGV, LLC
Correspondence Address	HARA K JACOBS BALLARD SPAHR LLP 1735 MARKET STREET, 51ST FLOOR PHILADELPHIA, PA 19103-7599 UNITED STATES jacobsh@ballardspahr.com, larsont@ballardspahr.com, englanderd@ballardspahr.com, phila_tmdocketing@ballardspahr.com, cramerp@ballardspahr.com
Submission	Opposition/Response to Motion
Filer's Name	Hara K. Jacobs
Filer's e-mail	jacobsh@ballardspahr.com, larsont@ballardspahr.com, cramerp@ballardspahr.com, phila_tmdocketing@ballardspahr.com, shor- em@ballardspahr.com
Signature	/Hara K. Jacobs/
Date	11/13/2014
Attachments	LVGV's Opposition to Motion To Suspend Rule - 91215246.pdf(52652 bytes) Exhibit A - G to LVGV's Opposition to Empire's Motion to Suspend Rule 2.127(d).pdf(1938245 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LVG V, LLC,	:	
	:	
Opposer,	:	
	:	
	:	
v.	:	Opposition No.: 91215246
	:	
	:	Mark: M - Class 28
Empire Resorts, Inc.,	:	
	:	
Applicant.	:	

**MEMORANDUM OF LAW IN OPPOSITION TO
APPLICANT’S MOTION TO SUSPEND RULE 2.127(d)**



Opposer, LVGV, LLC (“Opposer” or “LVGV”), through its attorneys, Ballard Spahr LLP, submits the instant memorandum of law in opposition to the motion filed by Applicant, Empire Resorts, Inc. (“Applicant” or “Empire”), requesting that, pursuant to 37 C.F.R. § 2.148, the Board suspend Rule 2.127(d) so that Applicant may file a motion to compel discovery while its motion for judgment on the pleadings is pending.

I. PRELIMINARY STATEMENT

Empire’s motion, pursuant to 37 C.F.R. § 2.148, requests that the Board suspend a Trademark Rule of Practice so that Empire may file a motion to compel discovery after the Board has suspended the proceedings pursuant to Rule 2.127(d). Empire’s motion is frivolous and yet another illustration of its wasteful and vexatious conduct that should cease – immediately. Trademark Rule 2.148 expressly states that the *Director* may suspend certain rules. Rule 2.148 does not grant authority to the Board to suspend the rules. Thus, Empire has filed a motion with the Board seeking relief that the Board is not authorized to grant under the Trademark Rule cited by Empire. Next, though Empire cites Rule 2.148 as the basis for its

motion, Empire does not even attempt to meet the standards of that rule. Rule 2.148 provides that the Director may suspend certain rules “in an extraordinary situation, when justice so requires and no other party is injured thereby.” Empire’s motion does not even acknowledge these requirements, which, in any case, it could not satisfy. Finally, there is no legitimate basis for Empire to seek the production of documents or to seek discovery responses to its outstanding 393 requests while its motions for partial judgment on the pleadings are pending. As Empire well knows, once the Board’s Order suspending the proceedings is lifted, LVGV will produce documents and will file a motion for a protective order because Empire’s 393 discovery requests are both internally duplicative of each other and are duplicative of Empire’s 241 discovery requests to which LVGV has already served complete responses.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Empire seeks to register the marks **Me.** and  for services and goods emanating from a destination casino resort in Classes 41, 43 and 28. LVGV opposed Empire’s six applications based on its common law rights in and sixteen Pleadings Registrations for its M Marks, including its marks M,  , M RESORT, and M IS FOR ME for services and goods emanating from a destination casino resort in Classes 41, 43 and 25. Those six proceedings (the “Proceedings”) are pending before the Board.¹

On July 22, 2014, LVGV filed a Motion to Consolidate the six Proceedings. (Dkt. No. 5.) Empire subsequently requested multiple, lengthy extensions of time to respond to LVGV’s Motion to Consolidate, which Empire’s counsel claimed were necessary due to

¹ Proceeding Nos. 91215415 (Me. for Class 28); 91215216 (Me. for Class 41); 91215247 (Me. for Class 43); 91215246 (M for Class 28); 91215215 (M for Class 41); and 91215208 (M for Class 43).

responsibilities in other pressing litigations. (See Dkt. Nos. 6-8.) As a matter of professional courtesy, LVGV consented to these requests, which resulted in Empire not filing its response to LVGV's Motion to Consolidate until September 4, 2014 – nearly two months after the motion was first filed. (Dkt. No. 9.) Within two weeks, Empire filed six lengthy motions for partial judgment on the pleadings. (See, e.g., Dkt. No. 13.) On October 1, 2014, Empire's counsel wrote to the Board, “respectfully direct[ed] the attention of the Board” to Rule 2.127(d), and *asked the Board when it would suspend the proceedings*. (Dkt. No. 17.) The Board suspended the Proceedings by Order dated October 8, 2014. (Dkt. No. 18.)

Prior to filing its Motion for Judgment on the Pleadings, Empire served sixteen sets of discovery requests in the Proceedings, totaling 634 individual requests. LVGV responded to the first ten sets of discovery requests, totaling 241 individual requests. After reviewing the remaining six sets of discovery requests containing 393 individual requests, LVGV's counsel wrote to Empire's counsel on September 30, 2014, and requested that Empire withdraw the six sets because they were duplicative of the 241 requests to which LVGV had already responded and because the 393 individual requests were duplicative of one other. (E-mail from T. Larson to C. Quinn dated September 30, 2014, Exh. B.) Empire's counsel, after a 17-day delay, refused to withdraw its discovery requests and advised LVGV that it should cross-reference its previous discovery responses in its forthcoming responses to the 393 duplicative discovery requests. (E-mail from C. Quinn to H. Jacobs and T. Larson dated October 17, 2014, Exh. C.) LVGV's counsel advised Empire's counsel that the exercise it proposed did not alleviate LVGV's burden of responding to the duplicative and harassing discovery and, therefore, LVGV intended to move for a protective order. (E-mails among H. Jacobs and C. Quinn dated October 20 and 22, Exh. C.) After contacting the Interlocutory Attorney to inquire about the appropriate procedure in

light of the Board's Order suspending the proceedings, LVGV's counsel wrote to Empire's counsel on October 28, advised him that the parties' discovery obligations were suspended and requested that the parties reach an agreement on the timing for responding to the six sets of outstanding discovery once the Board lifted its Order of suspension. (E-mail from H. Jacobs to C. Quinn dated October 28, 2014, Exh. C.) LVGV's counsel again reminded Empire's counsel that if Empire did not withdraw its discovery requests, LVGV would move for a protective order. (Id.) Empire's counsel ignored that communication entirely.

On November 4 at 5:35 p.m., Empire's counsel wrote to LVGV's counsel stating that if LVGV did not immediately provide Empire with a date when it would produce documents responsive to the discovery requests it had answered, Empire would move to compel. (E-mail from C. Quinn to H. Jacobs dated November 4, 2014 at 5:35 p.m., Exh. A.) Literally **five minutes later**, Empire filed its first of five motions pursuant to Rule 2.148 requesting that the Board suspend Rule 2.127(d) so that Empire may file a motion to compel discovery. (E-mail from C. Quinn to H. Jacobs dated November 4, 2014 at 5:40 p.m., Exh. A; Dkt. No. 19.) LVGV's counsel immediately wrote to Empire's counsel, cited the pertinent authorities, and requested that Empire withdraw its motion. (E-mail from H. Jacobs to C. Quinn dated November 4 at 6:29 p.m., Exh. D; E-mail from H. Jacobs to C. Quinn dated November 4 at 6:11 p.m., Exh. E.) Empire refused to withdraw its motion and, over the next two days, filed four more motions requesting that the Board suspend Rule 2.127(d) so that Empire may file motions to compel discovery.

The sum and substance of Empire's motion seeking to suspend Rule 2.127(d) while the Board decides its motion for partial judgment on the pleading is that Empire will be "greatly prejudiced by any further delay in receiving from LVGV the responsive documents."

(See Empire br. at p. 2.) Empire does not explain how or why it will suffer any prejudice by having LVGV produce documents and file its motion for a protective order after the suspension is lifted in accordance with the Trademark Rules of Practice. (Id.)


III. ARGUMENT

Empire’s motion is sanctionable and should be denied because it violates at least three tenets of Rule 11 of the Federal Rules of Civil Procedure. First, Empire’s legal contention, that it may file a motion with the Board pursuant to Rule 2.148 requesting that the Board suspend a Trademark Rule, is not warranted by existing law. Rule 2.148 states on its face that certain Trademark Rules may be suspended by the *Director*. 37 C.F.R. § 2.148. To seek relief under Rule 2.148, a party must file a Petition with the Commissioner and satisfy the multitude of procedural requirements that a Petition to the Commissioner must contain. 37 C.F.R. § 2.146(c). There are at least two precedential decisions from the Board stating that only the Commissioner, not the Board, may suspend or waive a Trademark Rule. Forest Labs. Inc. v. G.D. Searle & Co., 52 U.S.P.Q.2d 1058 (TTAB 1999); Giant Food, Inc. v. Standard Terry Mills, Inc., 229 U.S.P.Q. 955 n. 12 (TTAB 1986). Empire, citing no statute, rule or Board authority in its favor, filed its motion in direct violation of Rule 2.148 and two precedential decisions from the Board.² Its motion is not warranted by existing law. See Fed. R. Civ. P. 11(b)(2).

Second, Empire’s factual contention – that it will be “greatly prejudiced in any further delay in receiving from LVGV the responsive documents” – has no evidentiary support. Empire does not attempt to explain (because it cannot explain) how it will be prejudiced in any way if it receives documents from LVGV after the Board decides the pending motions to

² Empire also ignored the legal standard set forth in Rule 2.148, which requires a party seeking relief thereunder to demonstrate: (i) an extraordinary situation; (ii) in which justice requires suspension of a Trademark Rule; and (iii) no other party will be injured. 37 C.F.R. § 2.148.

consolidate and for partial judgment on the pleadings. There is ample time left in discovery and, in any case, the discovery schedule in the Proceedings will be reset as it always is to account for the time that has elapsed during the suspension. The stated factual basis for Empire's motion – great prejudice – is devoid of evidentiary support in Empire's motion and in the attached declaration of its counsel. See Fed. R. Civ. P. 11(b)(3).

Third, the procedural history of the Proceedings demonstrates that Empire's five motions are part of Empire's ongoing litigation strategy to harass LVGV and needlessly increase the costs of litigating the Proceedings. Empire served 634 discovery requests in Proceedings that concern two marks -- **Me.** and  -- for services and goods emanating from a destination casino resort in Classes 41, 43 and 28. Empire's discovery requests are highly duplicative and serve no purpose other than to waste the time of LVGV and its counsel answering the same questions again and again. LVGV invested substantial resources to respond to the first 241 discovery requests (which were internally duplicative) and to undertake the search for and collection of responsive documents. LVGV also invested substantial resources reviewing and analyzing the subsequent 393 requests, only to discover constant and literal déjà vu.

Not long after serving its voluminous discovery, Empire filed motions for judgment on the pleadings, arguing in three of those motions that it was entitled to dismissal of the proceeding in its entirety. Empire's six motions violated the most basic and unassailable principles governing motions for judgment on the pleadings by wholly ignoring the factual allegations in the parties' pleadings, and by arguing made-up, unsupportable facts outside the scope of the pleadings. LVGV has invested substantial resources to respond to Empire's motions for judgment on the pleadings, which Empire should never have filed in the first

instance. Serving hundreds of discovery requests only to argue that no discovery is necessary to render judgment in one's favor is more than inconsistent. It is a scorched earth litigation tactic.

On October 1, 2014, Empire's counsel wrote to the Board, "respectfully direct[ed] the attention of the Board" to Rule 2.127(d), *and asked the Board when it would suspend the proceedings*. (Dkt. No. 17.) On October 8, 2014, the Board issued its Order suspending the proceedings. (Dkt. No. 18.) Empire's immediate response to the Order of suspension was to serve more discovery. Within two weeks of the Board's Order suspending the proceedings, Empire served 78 more discovery requests. (E-mails from C. Quinn to H. Jacobs dated October 24, 2014 (without attachments), Exh. F.) LVGV's counsel wrote to Empire's counsel the next business day, explained that Empire's discovery requests were improper in light of the Board's Order of suspension, and requested that Empire re-serve its discovery once the suspension was lifted. (E-mail from H. Jacobs to C. Quinn dated October 27, 2014, Exh. G.) Shortly thereafter, Empire demanded documents and demanded responses to the 393 discovery requests, thus ignoring LVGV's repeated reminders that the Proceedings were suspended, and ignoring LVGV's consistent position that it would file a motion for a protective order once the suspension was lifted. Within literally five minutes of demanding documents from LVGV, Empire filed its first of five baseless motions seeking permission to compel discovery.

Empire caused the suspension of the Proceedings by filing motions for judgment on the pleadings, which require suspension under Rule 2.127(d), and by specifically writing to the Board and asking it to suspend the Proceedings, which the Board did. Then, with its 135 pages of briefs filed, Empire continued to litigate as if the suspension did not exist. It served brand new discovery. It demanded the production of documents in a proceeding in which it argued that it was entitled to judgment in its favor with no discovery. It demanded discovery

responses to 393 duplicative and harassing discovery requests, knowing that LVGV would be filing a motion for a protective order when it was procedurally proper to do so. When LVGV advised Empire, several times, that the Proceedings were suspended and discovery would occur after the suspension is lifted, Empire ignored every applicable rule and precedence and filed five baseless motions. The purpose of these motions is not to compel discovery. It is to harass LVGV and burden LVGV with more litigation expenses and to demonstrate that Empire will do whatever it takes, whether permissible under the Trademark Rules or not, to churn these Proceedings. See Fed. R. Civ. P. 11(b)(1). Empire's litigation tactics and filings are vexatious, for the improper purpose of multiplying the Proceedings, and should cease forthwith.

CONCLUSION

For the foregoing reasons, Applicant's motion should be denied and Applicant should be required to cease its harassing and vexatious litigation conduct.

Respectfully submitted,

Date: November 13, 2014

By: /Hara K. Jacobs/

Hara K. Jacobs
Troy E. Larson
BALLARD SPAHR LLP
1735 Market Street, 51st Fl.
Philadelphia, PA 19103
215-665-8500
jacobsh@ballardspahr.com
larsont@ballardspahr.com

ATTORNEYS FOR OPPOSER

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LVGV, LLC,

Opposer,

v.

Empire Resorts, Inc.,

Applicant.

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Opposition Nos.: 91215246

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Opposer's Memorandum of Law in Opposition to Applicant's Motion to Suspend Rule 2.127(d) in the above-referenced proceeding was served by e-mail on November 13, 2014, upon Applicant's counsel:

Charles N. Quinn
FOX ROTHSCHILD LLP
2000 Market Street, Floor 20
Philadelphia, PA 19103-3222
cquinn@foxrothschild.com
dmcmgregor@foxrothschild.com
cesch@foxrothschild.com
ipdocket@foxrothschild.com

By: /Troy E. Larson/
Troy Larson

EXHIBIT A

Jacobs, Hara K. (Phila)

From: Quinn, Charles N. <CQuinn@foxrothschild.com>
Sent: Tuesday, November 04, 2014 5:35 PM
To: Jacobs, Hara K. (Phila); Larson, Troy (Phila)
Cc: Williams, Darcy A.; Esch, Carolyn P.; McGregor, Deanna M.
Subject: LVGV v. Empire; Opposition 91215415; our file 089798.41301

Dear Hara and Troy,

LVGV documents that were to be supplied in response to Empire's requests for production have not to date been received, despite being promised in LVGV's response dated 12 August 2014.

Having not received the documents, if you cannot immediately furnish us with a date certain when we can expect to receive the documents, Empire will move to compel.

Cordially,

Charlie Quinn

Charles Quinn
Partner
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100, PO Box 673
Exton, PA 19341
(610) 458-4984 - direct
(610) 458-7337- fax
CQuinn@foxrothschild.com
www.foxrothschild.com

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Jacobs, Hara K. (Phila)

From: Quinn, Charles N. <CQuinn@foxrothschild.com>
Sent: Tuesday, November 04, 2014 5:40 PM
To: Jacobs, Hara K. (Phila); Larson, Troy (Phila)
Cc: Esch, Carolyn P.; Williams, Darcy A.; McGregor, Deanna M.
Subject: LVGV v. Empire; Opposition 91215246; our file 089798.40301
Attachments: MOTION TO SUSPEND RULES AND MOTION TO COMPEL DOCUMENTS AS FILED 11_4_2014 (89798.40301)-C1.PDF

Dear Hara and Troy:

The attached was filed today.

Regards,

Charlie Quinn

Charles Quinn
Partner
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100, PO Box 673
Exton, PA 19341
(610) 458-4984 - direct
(610) 458-7337- fax
CQuinn@foxrothschild.com
www.foxrothschild.com

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LVGV, LLC	:	Opposition 91215246
	:	
	Opposer	: Application 85/736,471
v.	:	
	:	Mark: “M (stylized)”
EMPIRE RESORTS, INC.	:	
	:	Class: 28
	Applicant	:
	:	Interlocutory Attorney:
		Andrew P. Baxley

Applicant, Empire Resorts, Inc. (hereinafter “Empire”) moves that the Board suspend rule 2.127(d) in the above-captioned trademark opposition proceeding and permit Empire to submit for the Board’s immediate consideration Empire’s accompanying Motion to Compel Production of Documents Under 37 CFR 2.120(e).

On 12 August 2014, LVGV served LVGV's responses to Empire's Request for Production of Documents.

On 24 September 2014, Empire filed a Motion for Judgment on the Pleadings. On 8 October 2014, proceedings were suspended pending disposition of Empire’s Motion for Judgment on the Pleadings and LVGV’s Motion for Consolidation of this Opposition with other oppositions that had been filed by LVGV against others of Empire’s pending applications. The Order granting the suspension states in pertinent part; “Any paper filed during the pendency of

this motion which is not relevant thereto will be given no consideration. *See* Trademark Rule 2.127(d).”

Despite representations made in LVGV’s 12 August 2014 response that documents responding to Empire’s various document production requests would be forthcoming, no such documents had been received by Empire’s counsel as of 9 October 2014. On that date, Empire’s counsel inquired via e-mail of LVGV’s counsel as to when Empire’s counsel could expect to receive the requested documents. On 14 October 2014 LVGV’s counsel in an email to the undersigned promised “to get back” to Empire’s counsel later that week or early the following week with “a time frame” for LVGV’s production. Neither the promised “time frame” nor any documents have been forthcoming from LVGV.

The Board may suspend the rules pursuant to 37 CFR 2.148.

Accordingly, Empire moves this Board for an order suspending rule 2.127(d) and permitting Empire to file the attached Motion to Compel Production of Documents. Empire’s defense of its trademark application 85/736,471 will be greatly prejudiced by any further delay in receiving from LVGV the responsive discovery documents. LVGV promised these discovery documents to Empire prior to the suspension of proceedings and Empire is entitled to same under rule 2.120.

Date: November 4, 2014

/Charles N. Quinn/
Charles N. Quinn
Attorney for Applicant
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100
Exton, PA 19341
610-458-4984
610-458-7337 (fax)
cquinn@foxrothschild.com
www.foxrothschild.com

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

LVGV LLC	:	
	:	Opposition 91215246
	:	
v.	:	Application 85/736,471
	:	
EMPIRE RESORTS, INC.	:	Mark: "M" (stylized)
	:	
	:	
Applicant	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of Empire Resorts, Inc.'s Motion to Suspend Rule 2.127(d) was served on Opposer's counsel on the date listed below by email, pursuant to an agreement between the parties, addressed as follows:

Hara K. Jacobs
Troy Larson
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
jacobsh@ballardspahr.com
larsont@ballardspahr.com

Date: November 4, 2014

/Charles N. Quinn/
Charles N. Quinn

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

LVGV LLC	:	Opposition 91215246
	:	
	Opposer	: Application 85/736,471
v.	:	
	:	Mark: "M (stylized)"
Empire Resorts, Inc.	:	
	:	Class: 28
	Applicant	:
	:	Interlocutory Attorney:
	:	Andrew P. Baxley

MOTION TO COMPEL PRODUCTION OF DOCUMENTS UNDER 37 CFR 2.120(e)

This is a Motion by Applicant, Empire Resorts, Inc. (hereinafter "Empire") to Compel Production of Documents by the Opposer, LVGV LLC (hereinafter "LVGV") in the above-captioned trademark opposition proceeding.

On 1 July 2014, Empire served a First Request for Production of Documents on Opposer.

On 12 August 2014, LVGV served LVGV's response to Empire's Request for Production of Documents.

On 8 October 2014, proceedings were suspended pending disposition of Empire's Motion for Judgment on the Pleadings and LVGV's Motion for Consolidation of this Opposition with other oppositions that had been filed by LVGV against others of Empire's pending applications.

Despite representations made in LVGV's 12 August 2014 response that documents responding to Empire's various document production requests would be forthcoming, no such documents had been received by Empire's counsel as of 9 October 2014. On that date, Empire's counsel inquired via e-mail of LVGV's counsel as to when Empire's counsel could expect to receive the requested documents. On 14 October 2014 LVGV's counsel in an email to the

undersigned promised “to get back” to us later that week or early the following week with “a time frame” for LVGV’s production. Neither the promised “time frame” nor any documents have been forthcoming.

When discovery requests are served before a suspension of proceedings, the obligation to respond to the discovery remains on-going as is clearly set forth in 37 CFR 2.120(e)(2) and Section 502 of the Trademark Manual of Examining Procedure. The suspension of proceedings does not suspend the obligation to respond fully to discovery requests that were served before the suspension order. In this case, LVGV is nearly three months delinquent in completing its response to Empire’s document production requests by supplying the promised documents, for which Empire is still waiting.

Accordingly, Empire moves this Board for an order requiring LVGV to furnish documents to Empire in accordance with LVGV’s 12 August 2014 response to Empire’s 1 July 2014 document production request.

Empire respectfully solicits issuance of an appropriate form of order requiring LVGV to produce the promised documents.

Date: 4 November 2014

/Charles N. Quinn/
Charles N. Quinn
Attorney for Applicant
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100
Exton, PA 19341
610-458-4984
610-458-7337 (fax)
cquinn@foxrothschild.com
www.foxrothschild.com

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

LVGV LLC	:	Opposition 91215246
	:	
	Opposer	: Application 85/736,471
v.	:	
	:	Mark: "M (stylized)"
Empire Resorts, Inc.	:	
	:	Class: 28
	Applicant	:
	:	Interlocutory Attorney:
	:	Andrew P. Baxley

DECLARATION OF CHARLES N. QUINN

1. I, Charles N. Quinn, hereby declare that I am a citizen of the United States, residing at 419 Bowen Drive, Exton, Pennsylvania, 19341, a partner in the law firm of Fox Rothschild LLP having my principal office at 747 Constitution Drive, Suite 100, Exton, Pennsylvania, 19341, a member in good standing of the Bar of the Supreme Court of the Commonwealth of Pennsylvania holding registration number 17,603 therein, admitted in good standing to practice in patent matters before the United States Patent and Trademark Office pursuant to registration 27,223, and am the attorney of record for the Applicant, Empire Resorts, Inc., in the above-referenced matter.

2. On 9 October 2014, I inquired of counsel for LVGV as to the whereabouts of documents to complete LVGV's 12 August 2014 response to Empire's 1 July 2014 First Request for Production of Documents. I made this inquiry to LVGV's counsel via e-mail. On 14 October 2014, I received a reply to my e-mail in which counsel for LVGV stated "We are in the process of gathering responsive documents, and I expect to get back to you late this week or

early next week with the timeframe for our production.” Despite the representation made by counsel for LVGV in the 14 October e-mail, no documents have been forthcoming.

3. Accordingly, I have made a good faith effort by correspondence to resolve with LVGV’s counsel the issues presented by the instant Motion, but the parties have been unable to resolve their differences and LVGV has not complied with its obligation to supply the required documents to Empire. I make this assertion and representation to support a Motion to Compel Production of Documents Under 37 CFR 2.120(e).

4. I hereby declare, under penalty of perjury pursuant to 28 USC 1746, that all statements made herein are true and that all statements made herein on information and belief are believed to be true and further that I realize that false statements and the like so made herein are punishable by fine, or imprisonment or both, under 18 USC 1001 et seq.

Respectfully submitted,

FOX ROTHSCHILD LLP

/Charles N. Quinn/
Charles N. Quinn
Darcy A. Williams
747 Constitution Drive, Suite 100
Exton, PA 19341
Tel: 610-458-4984
cquinn@foxrothschild.com
dwilliams@foxrothschild.com
Attorneys for Opposer

Dated: 4 November 2014

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

LVGV LLC

v.

Empire Resorts, Inc.

Opposer

Applicant

:
: Opposition 91215246
:
: Application 85/736,471
:
: Mark: "M" (stylized)
:
:
:

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of Empire Resorts, Inc.'s Motion to Compel Production under 37 CFR 2.120(e) served on Opposer's counsel on the date listed below by email, pursuant to an agreement between the parties, addressed as follows:

Hara K. Jacobs
Troy Larson
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
jacobsh@ballardspahr.com
larsont@ballardspahr.com

Date: 4 November 2014

/Charles N. Quinn/
Charles N. Quinn

EXHIBIT B

Larson, Troy (Phila)

From: Larson, Troy (Phila)
Sent: Tuesday, September 30, 2014 4:57 PM
To: 'CQuinn@foxrothschild.com'; 'DWilliams@foxrothschild.com'
Cc: Jacobs, Hara K. (Phila); Englander, Daniel B. (Atlanta)
Subject: LVGV v. Empire Resorts - Discovery Responses for Proceedings 91215247 and 91215208
Attachments: 91215247 Request for Admissions.pdf; LVGV Certificate of Service.pdf; 91215208 Document Requests.pdf; 91215208 Interrogatories.pdf; 91215208 Request for Admissions.pdf

Charles,

Attached are service copies of the following:

- (1) Opposer's Responses and Objections to Applicant's First Set of Requests for Admissions in Proceeding No. 91215247;
- (2) Opposer's Responses and Objections to Applicant's First Set of Requests for Admissions in Proceeding No. 91215208;
- (3) Opposer's Responses and Objections to Applicant's First Set Interrogatories in Proceeding No. 91215208;
- (4) Opposer's Responses and Objections to Applicant's First Set Requests for Production of Documents in Proceeding No. 91215208.

Discovery in Proceedings 91215212 and 91215216:

To date, Opposer has responded to over 240 discovery requests propounded by Applicant. Applicant's discovery requests are highly duplicative. For example, the first 50 of Applicant's Requests for Admissions in Proceedings 91215247 and 91215208 are identical. Likewise, virtually all of the outstanding 393 requests for admissions, interrogatories, and document requests you propounded for Proceedings 91215212 and 91215216 are duplicative of either each other or the 240+ discovery requests to which Opposer has already responded.

Opposer's responses to Applicant's six sets of discovery requests in Proceedings 91215212 and 91215216 are due next week. We request that you withdraw the six sets of discovery, containing 393 individual discovery requests, and serve non-duplicative, consolidated discovery requests.

Kindly confirm by Friday, October 3rd, whether Applicant will withdraw the outstanding discovery requests. If Applicant will not withdraw the requests, we intend to seek relief from the Board.

We are, of course, available to meet and confer on this issue next week.

Sincerely,

Troy

Troy E. Larson
Ballard Spahr LLP
1735 Market Street, 51st Floor

Philadelphia, PA 19103-7599

Direct: 215.864.8263

Fax: 215.864.8999

larsont@ballardspahr.com | www.ballardspahr.com

EXHIBIT C

Jacobs, Hara K. (Phila)

From: Jacobs, Hara K. (Phila)
Sent: Tuesday, October 28, 2014 4:37 PM
To: 'Quinn, Charles N.'; Larson, Troy (Phila)
Cc: 'Williams, Darcy A.'; 'Esch, Carolyn P.'; 'McGregor, Deanna M.'
Subject: RE: LVGV v. Empire Trademark Oppositions

Charlie,

We have not heard back from you in response to my email below. In light of the Board's Order suspending all six proceedings, Opposer's discovery obligations are suspended. Accordingly, we would like to reach an agreement with you on Opposer's time frame for responding to the six sets of discovery requests. We propose to respond to outstanding discovery within 30 days of the Board's Order lifting the suspension.

Further, as outlined below, if Applicant will not withdraw the six sets of discovery requests and serve non-duplicative requests, Opposer will move for a protective order.

We look forward to hearing from you.

Regards,

Hara

Hara K. Jacobs
Ballard Spahr LLP
1735 Market Street
51st Floor
Philadelphia, PA 19103-7599
Direct: 215.864.8209
Fax: 215.864.8999
jacobsh@ballardspahr.com | www.ballardspahr.com

From: Jacobs, Hara K. (Phila)
Sent: Wednesday, October 22, 2014 1:44 PM
To: 'Quinn, Charles N.'; Larson, Troy (Phila)
Cc: Williams, Darcy A.; Esch, Carolyn P.; McGregor, Deanna M.
Subject: RE: LVGV v. Empire Trademark Oppositions

Charlie,

Thank you for your e-mail providing the additional information we requested concerning Empire's October 17 discovery proposal.

We initially wrote to you on September 30 concerning Empire's six sets of outstanding discovery requests because the 393 discovery requests encompassed in Empire's six sets of requests are both duplicative of one another and duplicative of the 241 discovery requests to which we have already responded. In our correspondence, we requested that Empire withdraw the six sets of discovery requests and serve non-duplicative requests, which LVGV would then answer.

You have proposed that LVGV answer all 393 discovery requests and, in doing so, undertake the effort to cross-reference the duplicative requests to their identical counterpart by incorporating LVGV's answer to the duplicative discovery request into the outstanding 393 discovery requests. This is precisely the unreasonably burdensome and harassing exercise to which we object. That is why we asked Empire, the entity the propounded the requests, to go through its discovery, and remove all of the duplicative requests it propounded. Our client should not bear the burden and expense of Empire's duplicative and unreasonable discovery requests. Moreover, your proposal that LVGV incorporate by reference its extant interrogatory and document responses, and to refer to documents that have already been produced, is not a true proposal to resolve this discovery dispute because under the Federal Rules of Civil Procedure, LVGV has this option available to it in any case.

We again request that Empire withdraw its six sets of outstanding discovery requests and serve non-duplicative requests. Should we be unable to resolve this matter, we will file a motion for a protective order. I look forward to hearing from you.

Regards,

Hara

Hara K. Jacobs
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Philadelphia, PA 19103-7599
Direct: 215.864.8209
Fax: 215.864.8999
jacobsh@ballardspahr.com | www.ballardspahr.com

From: Quinn, Charles N. [<mailto:CQuinn@foxrothschild.com>]
Sent: Monday, October 20, 2014 1:03 PM
To: Jacobs, Hara K. (Phila); Larson, Troy (Phila)
Cc: Williams, Darcy A.; Esch, Carolyn P.; McGregor, Deanna M.
Subject: LVGV v. Empire Trademark Oppositions

Dear Hara,

As I read your message below, I think there is a typo in, or a misunderstanding as respecting, the first of your questions.

Your question reads as follows: "First, as a practical matter, how would we implement your proposal that Empire will accept as a response to one of the outstanding interrogatory responses a reference to a full and complete response that has already been given?"

Here is the way I think you intended that it should read: "First, as a practical matter, how would we implement your proposal that Empire will accept as a response to one of the outstanding interrogatories a reference to a full and complete response that has already been given?"

I hope this clarifies things and answers your question:

I envision that where LVGV has given a response to an interrogatory (call it "Interrogatory #1") in a first proceeding (call it "number 12345678") and perceives an unanswered interrogatory (call it "Interrogatory #2") in a second one of the

oppositions (call it proceeding "number 87654321") to be identical (or substantially identical) to Interrogatory #1, the response by LVGV to Interrogatory #2 would read something like this:

Pursuant to the letter agreement between the parties' counsel dated 20 October 2014, LVGV incorporates by reference the LVGV response to Interrogatory #1 made in proceeding number 12345678 on (date to be filled in).

Regarding your second question and whether there is any other context, I couldn't think of any other context, but I thought it best to leave that open.

Regards,

Charlie Quinn

Charles Quinn
Partner
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100, PO Box 673
Exton, PA 19341
(610) 458-4984 - direct
(610) 458-7337- fax
CQuinn@foxrothschild.com
www.foxrothschild.com

From: Jacobs, Hara K. (Phila) [<mailto:JacobsH@ballardspahr.com>]
Sent: Monday, October 20, 2014 12:01 PM
To: Quinn, Charles N.; Larson, Troy (Phila)
Cc: Williams, Darcy A.; Esch, Carolyn P.; McGregor, Deanna M.
Subject: RE: LVGV v. Empire Trademark Oppositions

Charlie,

Thank you for your proposal.

I am unclear on two aspects of your proposal. First, as a practical matter, how would we implement your proposal that Empire will accept as a response to one of the outstanding interrogatory responses a reference to a full and complete response that has already been given? We also have the same question as it related to document responses.

Second, I understand that your last paragraph stating, "Neither party shall use any aspect of the procedure outlined above against the opposing party in any way in any of these oppositions," is meant to preclude Opposer from referring to this agreement in the context of Opposer's pending motion to consolidate. Is there any other context?

I look forward to hearing from you.

Regards,

Hara

Hara K. Jacobs

Ballard Spahr LLP
1735 Market Street
51st Floor
Philadelphia, PA 19103-7599
Direct: 215.864.8209
Fax: 215.864.8999
jacobsh@ballardspahr.com | www.ballardspahr.com

From: Quinn, Charles N. [<mailto:CQuinn@foxrothschild.com>]
Sent: Friday, October 17, 2014 5:25 PM
To: Jacobs, Hara K. (Phila); Larson, Troy (Phila)
Cc: Williams, Darcy A.; Esch, Carolyn P.; McGregor, Deanna M.
Subject: LVGV v. Empire Trademark Oppositions

Charles N. Quinn
Direct Dial: (610) 458-4984
Email Address: cquinn@foxrothschild.com

October 17, 2014

Via E-mail: jacobsh@ballardspahr.com and larsont@ballardspahr.com

Hara K. Jacobs, Esquire
Troy Larson, Esquire
Ballard Spahr Stillman and Friedman LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599

**Re: LVGV, LLC vs. Empire Resorts, Inc.
Trademark Oppositions**

Dear Hara and Troy:

We thought it would be easiest to address in writing your concerns about allegedly duplicative and arguably redundant Interrogatories and Requests for Production of Documents as among the six oppositions brought by LVGV against Empire.

Empire is not interested in serving or receiving unfounded, or unwarranted, or unnecessary duplicative or redundant discovery requests. Accordingly, Empire has the following proposal for an agreement between Empire and LVGV, to address LVGV's concerns.

As respecting Interrogatories, Empire will accept as a response by LVGV to an Empire Interrogatory, in a given one of the oppositions, a reference to a full and complete response that has been given by LVGV to another either identical or arguably substantially identical Interrogatory in one of the other oppositions brought by LVGV against Empire.

Empire will also accept as a response by LVGV to an Empire Request for Production of Documents the response and supporting documentation that has been furnished by LVGV in response to an identical or

arguably substantially identical Empire Request for Production of Documents in another one of the oppositions brought by LVGV against Empire.

This procedure is without prejudice to Empire's right to move for a further and more detailed answer in the event Empire perceives LVGV's response, whether direct or by reference, to an Empire Interrogatory to be unresponsive, or incomplete, or otherwise not in compliance with the Federal Rules of Civil Procedure.

This procedure is also without prejudice to Empire's right to move for a further and more complete response in the event Empire perceives LVGV's response, whether direct or by reference, to an Empire Request for Production of Documents to be unresponsive or incomplete, or otherwise not in compliance with the Federal Rules of Civil Procedure.

Empire may use any LVGV response, made by reference to an Empire Interrogatory or to an Empire Document Production Request, in the same manner and extent and for any legitimate purpose, as if the LVGV response to the Empire Interrogatory or Document Production Request had been made directly and not by reference.

Empire shall have the same rights, to respond to any LVGV Interrogatory or Document Production Request by reference, as LVGV's rights vis-à-vis Empire as set forth above. If Empire responds to any LVGV Interrogatory or Document Production Request by reference using the procedure set forth above, LVGV shall have the same rights (namely the same rights as Empires' use and contest rights as set forth above) to use the Empire response and to contest the adequacy of the Empire response.

Neither party shall use any aspect of the procedure outlined above against the opposing party in any way in any of these oppositions. This includes, but is not limited to, use in any request for reconsideration that LVGV might make, and any opposing position Empire might take, in the event LVGV's Motion for Consolidation is denied in whole or in part.

We look forward to hearing from you with LVGV's agreement to the foregoing.

Very truly yours,

Charles N. Quinn

CNQ:cpe

Charles Quinn
Partner
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100, PO Box 673
Exton, PA 19341
(610) 458-4984 - direct
(610) 458-7337 - fax
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EXHIBIT D

Jacobs, Hara K. (Phila)

From: Jacobs, Hara K. (Phila)
Sent: Tuesday, November 04, 2014 6:29 PM
To: 'Quinn, Charles N.'; Larson, Troy (Phila)
Cc: Esch, Carolyn P.; Williams, Darcy A.; McGregor, Deanna M.; Englander, Daniel B. (Atlanta)
Subject: RE: LVGV v. Empire; Opposition 91215246; our file 089798.40301
Attachments: RE: LVGV v. Empire Trademark Oppositions

Charlie,

Empire's motion to compel is procedurally improper and we ask that you withdraw it. Pursuant to TBMP 528.03, the entire proceeding is stayed, and the time to respond to outstanding discovery is tolled as a result of the Board's suspension order. Indeed, I confirmed this point to you in my email dated October 28 (attached). Therefore, LVGV is not required to serve responsive documents until the suspension order is lifted. There is no basis for Empire to request that the Board lift its suspension order to consider Empire's motion to compel the production of documents that LVGV is not required to produce until the Board decides the parties' pending motions.

Accordingly, kindly withdraw Empire's motion to compel. We look forward to hearing from you.

Regards,

Hara

Hara K. Jacobs
Ballard Spahr LLP
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51st Floor
Philadelphia, PA 19103-7599
Direct: 215.864.8209
Fax: 215.864.8999
jacobsh@ballardspahr.com | www.ballardspahr.com

From: Quinn, Charles N. [<mailto:CQuinn@foxrothschild.com>]
Sent: Tuesday, November 04, 2014 5:40 PM
To: Jacobs, Hara K. (Phila); Larson, Troy (Phila)
Cc: Esch, Carolyn P.; Williams, Darcy A.; McGregor, Deanna M.
Subject: LVGV v. Empire; Opposition 91215246; our file 089798.40301

Dear Hara and Troy:

The attached was filed today.

Regards,

Charlie Quinn

Charles Quinn
Partner
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100, PO Box 673
Exton, PA 19341
(610) 458-4984 - direct
(610) 458-7337- fax
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Jacobs, Hara K. (Phila)

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Sent: Tuesday, October 28, 2014 4:37 PM
To: 'Quinn, Charles N.'; Larson, Troy (Phila)
Cc: 'Williams, Darcy A.'; 'Esch, Carolyn P.'; 'McGregor, Deanna M.'
Subject: RE: LVGV v. Empire Trademark Oppositions

Charlie,

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Further, as outlined below, if Applicant will not withdraw the six sets of discovery requests and serve non-duplicative requests, Opposer will move for a protective order.

We look forward to hearing from you.

Regards,

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Sent: Wednesday, October 22, 2014 1:44 PM
To: 'Quinn, Charles N.'; Larson, Troy (Phila)
Cc: Williams, Darcy A.; Esch, Carolyn P.; McGregor, Deanna M.
Subject: RE: LVGV v. Empire Trademark Oppositions

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Regards,

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Direct: 215.864.8209
Fax: 215.864.8999
jacobsh@ballardspahr.com | www.ballardspahr.com

From: Quinn, Charles N. [<mailto:CQuinn@foxrothschild.com>]
Sent: Monday, October 20, 2014 1:03 PM
To: Jacobs, Hara K. (Phila); Larson, Troy (Phila)
Cc: Williams, Darcy A.; Esch, Carolyn P.; McGregor, Deanna M.
Subject: LVGV v. Empire Trademark Oppositions

Dear Hara,

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oppositions (call it proceeding "number 87654321") to be identical (or substantially identical) to Interrogatory #1, the response by LVGV to Interrogatory #2 would read something like this:

Pursuant to the letter agreement between the parties' counsel dated 20 October 2014, LVGV incorporates by reference the LVGV response to Interrogatory #1 made in proceeding number 12345678 on (date to be filled in).

Regarding your second question and whether there is any other context, I couldn't think of any other context, but I thought it best to leave that open.

Regards,

Charlie Quinn

Charles Quinn
Partner
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100, PO Box 673
Exton, PA 19341
(610) 458-4984 - direct
(610) 458-7337- fax
CQuinn@foxrothschild.com
www.foxrothschild.com

From: Jacobs, Hara K. (Phila) [<mailto:JacobsH@ballardspahr.com>]
Sent: Monday, October 20, 2014 12:01 PM
To: Quinn, Charles N.; Larson, Troy (Phila)
Cc: Williams, Darcy A.; Esch, Carolyn P.; McGregor, Deanna M.
Subject: RE: LVGV v. Empire Trademark Oppositions

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I look forward to hearing from you.

Regards,

Hara

Hara K. Jacobs

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From: Quinn, Charles N. [<mailto:CQuinn@foxrothschild.com>]
Sent: Friday, October 17, 2014 5:25 PM
To: Jacobs, Hara K. (Phila); Larson, Troy (Phila)
Cc: Williams, Darcy A.; Esch, Carolyn P.; McGregor, Deanna M.
Subject: LVGV v. Empire Trademark Oppositions

Charles N. Quinn
Direct Dial: (610) 458-4984
Email Address: cquinn@foxrothschild.com

October 17, 2014

Via E-mail: jacobsh@ballardspahr.com and larsont@ballardspahr.com

Hara K. Jacobs, Esquire
Troy Larson, Esquire
Ballard Spahr Stillman and Friedman LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599

**Re: LVGV, LLC vs. Empire Resorts, Inc.
Trademark Oppositions**

Dear Hara and Troy:

We thought it would be easiest to address in writing your concerns about allegedly duplicative and arguably redundant Interrogatories and Requests for Production of Documents as among the six oppositions brought by LVGV against Empire.

Empire is not interested in serving or receiving unfounded, or unwarranted, or unnecessary duplicative or redundant discovery requests. Accordingly, Empire has the following proposal for an agreement between Empire and LVGV, to address LVGV's concerns.

As respecting Interrogatories, Empire will accept as a response by LVGV to an Empire Interrogatory, in a given one of the oppositions, a reference to a full and complete response that has been given by LVGV to another either identical or arguably substantially identical Interrogatory in one of the other oppositions brought by LVGV against Empire.

Empire will also accept as a response by LVGV to an Empire Request for Production of Documents the response and supporting documentation that has been furnished by LVGV in response to an identical or

arguably substantially identical Empire Request for Production of Documents in another one of the oppositions brought by LVGV against Empire.

This procedure is without prejudice to Empire's right to move for a further and more detailed answer in the event Empire perceives LVGV's response, whether direct or by reference, to an Empire Interrogatory to be unresponsive, or incomplete, or otherwise not in compliance with the Federal Rules of Civil Procedure.

This procedure is also without prejudice to Empire's right to move for a further and more complete response in the event Empire perceives LVGV's response, whether direct or by reference, to an Empire Request for Production of Documents to be unresponsive or incomplete, or otherwise not in compliance with the Federal Rules of Civil Procedure.

Empire may use any LVGV response, made by reference to an Empire Interrogatory or to an Empire Document Production Request, in the same manner and extent and for any legitimate purpose, as if the LVGV response to the Empire Interrogatory or Document Production Request had been made directly and not by reference.

Empire shall have the same rights, to respond to any LVGV Interrogatory or Document Production Request by reference, as LVGV's rights vis-à-vis Empire as set forth above. If Empire responds to any LVGV Interrogatory or Document Production Request by reference using the procedure set forth above, LVGV shall have the same rights (namely the same rights as Empires' use and contest rights as set forth above) to use the Empire response and to contest the adequacy of the Empire response.

Neither party shall use any aspect of the procedure outlined above against the opposing party in any way in any of these oppositions. This includes, but is not limited to, use in any request for reconsideration that LVGV might make, and any opposing position Empire might take, in the event LVGV's Motion for Consolidation is denied in whole or in part.

We look forward to hearing from you with LVGV's agreement to the foregoing.

Very truly yours,

Charles N. Quinn

CNQ:cpe

Charles Quinn
Partner
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100, PO Box 673
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(610) 458-4984 - direct
(610) 458-7337- fax
CQuinn@foxrothschild.com
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EXHIBIT E

Jacobs, Hara K. (Phila)

From: Jacobs, Hara K. (Phila)
Sent: Tuesday, November 04, 2014 6:11 PM
To: 'Quinn, Charles N.'; Larson, Troy (Phila)
Cc: Williams, Darcy A.; Esch, Carolyn P.; McGregor, Deanna M.; Englander, Daniel B. (Atlanta)
Subject: RE: LVGV v. Empire; Opposition Proceeding 91215212; our file 089798.42301
Attachments: LVGV v. Empire -- Opposition 91215247; our file 089798.45301

Charlie,

The proceedings are suspended. Empire previously agreed that we would respond to all outstanding discovery, including the discovery referenced in your email below, within 30 days of the Board's Order lifting the suspension. Please see the attached email from you confirming this fact.

Regards,

Hara

Hara K. Jacobs
Ballard Spahr LLP
1735 Market Street
51st Floor
Philadelphia, PA 19103-7599
Direct: 215.864.8209
Fax: 215.864.8999
jacobsh@ballardspahr.com | www.ballardspahr.com

From: Quinn, Charles N. [<mailto:CQuinn@foxrothschild.com>]
Sent: Tuesday, November 04, 2014 5:37 PM
To: Jacobs, Hara K. (Phila); Larson, Troy (Phila)
Cc: Williams, Darcy A.; Esch, Carolyn P.; McGregor, Deanna M.
Subject: LVGV v. Empire; Opposition Proceeding 91215212; our file 089798.42301

Dear Hara and Troy,

LVGV's responses to Empire's discovery requests for this proceeding were, by our computation, due on last Thursday (requests for admissions) and Sunday (interrogatories and requests for production of documents).

When may we expect to receive LVGV's responses?-

Cordially,

Charlie Quinn

Charles Quinn
Partner
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100, PO Box 673
Exton, PA 19341
(610) 458-4984 - direct
(610) 458-7337 - fax
CQuinn@foxrothschild.com
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Jacobs, Hara K. (Phila)

From: Quinn, Charles N. <CQuinn@foxrothschild.com>
Sent: Tuesday, October 28, 2014 5:46 PM
To: Jacobs, Hara K. (Phila); Larson, Troy (Phila)
Cc: Esch, Carolyn P.; McGregor, Deanna M.; Williams, Darcy A.; Englander, Daniel B. (Atlanta)
Subject: LVGV v. Empire -- Opposition 91215247; our file 089798.45301

Dear Hara,

Thank you for your email below.

Empire will not withdraw Empire's discovery requests in this matter, as you have requested, but will agree that LVGV may defer responding to the discovery requests until after the suspension order has been lifted, with LVGV's responses being due 30 days from the date the suspension order is lifted.

Regards,

Charlie Quinn

Charles Quinn
Partner
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100, PO Box 673
Exton, PA 19341
(610) 458-4984 - direct
(610) 458-7337- fax
CQuinn@foxrothschild.com
www.foxrothschild.com

From: Jacobs, Hara K. (Phila) [<mailto:JacobsH@ballardspahr.com>]
Sent: Monday, October 27, 2014 6:59 PM
To: Quinn, Charles N.; Larson, Troy (Phila)
Cc: Esch, Carolyn P.; McGregor, Deanna M.; Williams, Darcy A.; Englander, Daniel B. (Atlanta)
Subject: RE: LVGV v. Empire -- Opposition 91215247; our file 089798.45301

Charlie,

As indicated in your email below, on October 24, 2014, Applicant purported to serve interrogatory and documents requests in an opposition proceeding that is currently suspended pending the disposition of Opposer's Motion to Consolidate and Applicant's Motion for Judgment on the Pleadings. The Board suspended the proceeding by the attached Order dated October 8, 2014. It is procedurally improper for a party to serve discovery while the proceedings are suspended. *Orion Group, Inc. v. Orion Insurance Co. P.L.C.*, 12 U.S.P.Q.2d 1923 n.3 (TTAB 1989).

Opposer, therefore, objects to both Applicant's "First Interrogatories" and "First Set of Requests for Production of Documents" in Opposition No. 9125247. Opposer requests that you withdraw these requests and re-serve them after the Board lifts its suspension of the proceedings. Kindly confirm that you will do so.

Regards,

Hara

Hara K. Jacobs

Ballard Spahr LLP
1735 Market Street
51st Floor
Philadelphia, PA 19103-7599
Direct: 215.864.8209
Fax: 215.864.8999
jacobsh@ballardspahr.com | www.ballardspahr.com

From: Quinn, Charles N. [<mailto:CQuinn@foxrothschild.com>]
Sent: Friday, October 24, 2014 2:56 PM
To: Jacobs, Hara K. (Phila); Larson, Troy (Phila)
Cc: Esch, Carolyn P.; McGregor, Deanna M.; Williams, Darcy A.
Subject: LVGV v. Empire -- Opposition 91215247; our file 089798.45301

Dear Counsel:

Empire's First Interrogatories to LVGV in this proceeding are attached.

Please acknowledge receipt by return email.

Thank you,

Charlie Quinn

Charles Quinn
Partner
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100, PO Box 673
Exton, PA 19341
(610) 458-4984 - direct
(610) 458-7337- fax
CQuinn@foxrothschild.com
www.foxrothschild.com

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hardcopy of the e-mail to Fox Rothschild LLP, 2000 Market Street, Philadelphia PA 19103-3222 via the U.S. Postal Service. We will reimburse you for all expenses incurred. Thank you.

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EXHIBIT F

Jacobs, Hara K. (Phila)

From: Quinn, Charles N. <CQuinn@foxrothschild.com>
Sent: Friday, October 24, 2014 2:56 PM
To: Jacobs, Hara K. (Phila); Larson, Troy (Phila)
Cc: Esch, Carolyn P.; McGregor, Deanna M.; Williams, Darcy A.
Subject: LVGV v. Empire -- Opposition 91215247; our file 089798.45301
Attachments: 27813409_1_LVGV v. Empire - FIRST ROGS TO LVGV (Pro. No. 91215247) (089798.45301)-C3.pdf

Dear Counsel:

Empire's First Interrogatories to LVGV in this proceeding are attached.

Please acknowledge receipt by return email.

Thank you,

Charlie Quinn

Charles Quinn
Partner
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100, PO Box 673
Exton, PA 19341
(610) 458-4984 - direct
(610) 458-7337- fax
CQuinn@foxrothschild.com
www.foxrothschild.com

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Jacobs, Hara K. (Phila)

From: Quinn, Charles N. <CQuinn@foxrothschild.com>
Sent: Friday, October 24, 2014 4:11 PM
To: Jacobs, Hara K. (Phila); Larson, Troy (Phila)
Cc: Esch, Carolyn P.; McGregor, Deanna M.; Williams, Darcy A.
Subject: LVGV v. Empire; Opposition 91215247; our file 089798.45301
Attachments: 27817243_1_LVGV v. EMPIRE - FIRST REQUESTS FOR PRODUCTION TO LVGV (Pro. No.91215247) (89798.45301)-C1.pdf

Dear Colleagues:

Empire's First Set of Requests for Production of Documents is attached.

Please acknowledge receipt by return email.

Thank you,

Charlie Quinn

Charles Quinn
Partner
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100, PO Box 673
Exton, PA 19341
(610) 458-4984 - direct
(610) 458-7337- fax
CQuinn@foxrothschild.com
www.foxrothschild.com

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EXHIBIT G

Jacobs, Hara K. (Phila)

From: Jacobs, Hara K. (Phila)
Sent: Monday, October 27, 2014 6:59 PM
To: 'Quinn, Charles N.'; Larson, Troy (Phila)
Cc: Esch, Carolyn P.; McGregor, Deanna M.; Williams, Darcy A.; Englander, Daniel B. (Atlanta)
Subject: RE: LVGV v. Empire -- Opposition 91215247; our file 089798.45301
Attachments: Suspension Order.pdf

Charlie,

As indicated in your email below, on October 24, 2014, Applicant purported to serve interrogatory and documents requests in an opposition proceeding that is currently suspended pending the disposition of Opposer's Motion to Consolidate and Applicant's Motion for Judgment on the Pleadings. The Board suspended the proceeding by the attached Order dated October 8, 2014. It is procedurally improper for a party to serve discovery while the proceedings are suspended. *Orion Group, Inc. v. Orion Insurance Co. P.L.C.*, 12 U.S.P.Q.2d 1923 n.3 (TTAB 1989).

Opposer, therefore, objects to both Applicant's "First Interrogatories" and "First Set of Requests for Production of Documents" in Opposition No. 9125247. Opposer requests that you withdraw these requests and re-serve them after the Board lifts its suspension of the proceedings. Kindly confirm that you will do so.

Regards,

Hara

Hara K. Jacobs
Ballard Spahr LLP
1735 Market Street
51st Floor
Philadelphia, PA 19103-7599
Direct: 215.864.8209
Fax: 215.864.8999
jacobsh@ballardspahr.com | www.ballardspahr.com

From: Quinn, Charles N. [<mailto:CQuinn@foxrothschild.com>]
Sent: Friday, October 24, 2014 2:56 PM
To: Jacobs, Hara K. (Phila); Larson, Troy (Phila)
Cc: Esch, Carolyn P.; McGregor, Deanna M.; Williams, Darcy A.
Subject: LVGV v. Empire -- Opposition 91215247; our file 089798.45301

Dear Counsel:

Empire's First Interrogatories to LVGV in this proceeding are attached.

Please acknowledge receipt by return email.

Thank you,

Charlie Quinn

Charles Quinn

Partner

Fox Rothschild LLP

Eagleview Corporate Center

747 Constitution Drive, Suite 100, PO Box 673

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CQuinn@foxrothschild.com

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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: October 8, 2014

Opposition No. 91215208
Opposition No. 91215212
Opposition No. 91215216
Opposition No. 91215246
Opposition No. 91215247
Opposition No. 91215415

LVGV, LLC

v.

Empire Resorts, Inc.

Amy Matelski, Paralegal Specialist:

Proceedings are suspended pending disposition of opposer's motion to consolidate the above mentioned proceedings, filed July 22, 2014 and applicant's motion for partial judgment on the pleadings, filed September 23, 2014.¹ Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. *See* Trademark Rule 2.127(d).

Opposer's response to applicant's motion for partial judgment on the pleadings is due November 16, 2014. The motions will be decided in due course.

¹ Applicant's answer to the notice of opposition, filed April 14, 2014 is noted and accepted. Applicant's consented request for extensions of time to file a response to opposer's motion to consolidate, dated August 1, 2014, August 20, 2014 and August 27, 2014 are noted and granted. Applicant's response in opposition to opposer's motion to consolidate, filed September 4, 2014 is noted. Opposer's reply brief in support of its motion to consolidate, filed September 19, 2014 is also noted.

Applicant's consented motion to extend opposer's time to file a response to applicant's motion for partial judgment on the pleadings, filed September 26, 2014 and October 2, 2014 are granted.